



European Fund for the Balkans

Media Freedom and Integrity in the Western Balkans: Recent Developments

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EFB issue papers series



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Executive Summary

Media freedom has declined sharply in Bosnia-Herzegovina, Macedonia and Serbia over the past several months. Several high-profile cases are evidence of this decline. In Bosnia in December 2014, police raided an internet portal after the publication of a recording that embarrassed the Bosnian Serb ruling party. In Macedonia, a series of wiretapped conversations released by the opposition this year has put the government on the defensive as it seeks to dismiss evidence that it has routinely monitored and pressured reporters and editors. And in Serbia, Aleksandar Vučić, the prime minister, has been publicly denouncing publications whose coverage displeases him, and attacking EU officials who he claims are behind the coverage.

In addition to particular cases of harassment by governments or other political actors, journalists in the Western Balkans are also facing increasingly difficult economic conditions in which competition for scarce advertising - notably from public bodies - puts media in a position of dependence. Direct and indirect interference by the authorities in everyday coverage is commonplace.

In a situation where electoral politics is often fiercely competitive but the rule of law incomplete, the temptation is great for those in power, or those seeking power, to pressure the media in pursuit of their political agendas. Information is treated as currency in a zero-sum game. Values of media freedom and freedom of expression will remain meaningless unless properly enacted in domestic law and enforced fairly and impartially. Hence, there is a pressing need for better laws and regulation to shield reporters and editors from undue influence. Responsibility falls squarely on the governments of the Western Balkans and on those - primarily the European Union - that provide assistance.

At the same time, governments, the EU and foreign donors must think of ways to go beyond a legal-institutional approach to freedom of media and to develop innovative ways to support independent media.

Introduction



Even the most cursory glance at recent reports from Bosnia-Herzegovina, Macedonia and Serbia would suggest that media freedom in the region has declined quite sharply over the past year. Across the Western Balkans, the political battles that are most likely to compromise media freedom have intensified. Media owners, their publications and the journalists who work for them have come under massive pressure from political actors who feel that they are joined in a zero-sum game. The depressed economic environment has sharpened a sense that the media are under siege, as competition for scarce advertising budgets gets fiercer.

This report, compiled from open-source materials, provides a snapshot of recent developments affecting media freedom across the region. It is not a systematic study of trends over time. However, accumulated anecdotal evidence and reports from individual journalists, from local and international advocacy groups, and from the Organization for Security and Co-operation in Europe and the European Commission suggest a regulatory, political and economic environment that is making the work of free media increasingly difficult across the region.

What this snapshot also highlights, however, is that a legal-institutional view of media freedom will fail to capture the real state of affairs in an environment where the rule of law is at best only partially assured. While good rules are important, they remain meaningless as long as prosecutors, judges and the police apply them selectively and politicians know they can get away with breaching them. Most countries in the Western Balkans have decent legal mechanisms that should ensure a free media - but in practice, many provisions remain dead letter as political interests interfere with their application.

Take the example of Bosnia-Herzegovina, which has some of the region's strongest laws and institutions protecting media freedom, passed with international support (and occasional pressure). Nevertheless, it is a tough and challenging environment for journalists who take their job seriously - just like in neighbouring countries with less stringent regulation. "Although the idea of [media] self-regulation has taken the deepest root in Bosnia and Herzegovina, in the environment where the laws are implemented in accordance with political interests its effect is restricted in scope," write the authors of "Media Integrity Matters", a 2014 study conducted by the South East European Media Observatory. Equal arguments could be made about all the countries in the region, to varying degrees.

This is an important insight for governments, international organisations, advocacy groups and foreign donors seeking to strengthen the free media in the Western Balkans. In an imperfect world where the rule of law is routinely challenged by entrenched interests, rewriting laws and regulations is but one dimension of strengthening freedom. A deep engagement with a country's politics is required to understand, and change, a culture of viewing media as a pawn in a high-stakes game, and a culture of impunity for those in power.

This report focuses on the three countries where issues of media freedom appear most acute and where there has been the most pronounced deterioration in recent months: Bosnia-Herzegovina, Macedonia and Serbia. All three are incomplete democracies -- democratic systems without the rule of law. Macedo-

nia and Serbia are governed by strongmen who are tightening their grip on the institutions of the state while preserving the outward trappings of democracy. Bosnia-Herzegovina, thanks to its fragmented political set-up, provides more space for freedom of expression, but there, too, this freedom is increasingly being curtailed.

This does not, however, mean that the issues touched upon in this report are irrelevant to Albania, Kosovo and Montenegro. They, too, are faced with a peculiar mixture of chaotic de-regulation and overbearing governments, small and fragmented markets that make media more vulnerable to economic pressure, and a winner-takes-all approach to democratic competition that seeks to silence political opponents.

Overview and cross-cutting themes

The annual World Press Freedom Index, published by Reporters without Borders last month (February 2015), identified the EU and Western Balkans as the region with the sharpest regional decline in media freedom worldwide. Serbia saw a marked deterioration, and Kosovo also declined. The only Balkan countries whose scores were better last year than in 2013 were Albania and Macedonia - but Macedonia still ranks lowest on the media freedom scale of any European country, and 117th out of the 180 countries surveyed.

In a political culture where rapid democratisation, in many cases preceded or followed by armed conflict, has unsettled political actors and created an environment in which rules are fluid, information is seen as currency in a zero-sum - and often existential - struggle between opposing forces. Values of media freedom and freedom of expression will remain meaningless unless properly enacted in domestic law and enforced by the courts. But even then, the political imperative to instrumentalise the media in pursuit of power and particularist agendas remains strong and must be checked again and again.

Unfortunately, a decline in media freedom in the EU and internationally has made outside actors seeking to change the situation in the Balkans vulnerable to accusations of double standards. Political elites in the Western Balkans can point to Hungary, Bulgaria and Romania as examples of EU member states that have to varying degrees experienced backsliding on democratic values more broadly, while the political use of the media - notably public broadcasters - is routine in member states including Italy, a country that last year saw an uptick in the use of defamation suits by public officials against journalists. In the United States, prosecutors have been seeking to compel reporters to disclose their sources.

In addition, there is a sense that the EU accession process, in which all the countries of the region are engaged in one form or another, provides insufficient safeguards against infringements of media freedom and freedom of expression. Political elites in the countries of the Western Balkans appear to have calculated that any gains from the manipulation of public opinion far outweigh the costs that might conceivably be imposed by the EU (but frequently are not). This calculation is reinforced by a sense that the EU's overarching strategic goals in the region will trump concerns about fundamental freedoms. The most prominent example is the on-going, EU-brokered dialogue between Belgrade and Prishtina, whose successes seem to have dampened the European Commission's appetite for criticising the Serbian government in its crackdown on the media.

Serbia

Testy relations between the Serbian government of Prime Minister Aleksandar Vučić and the media reached a new low with an attack by Vučić on the Balkan Investigative Reporting Network (BIRN) in January 2015.

Vučić, prime minister since April 2014, called BIRN reporters “liars” and accused the European Commission of paying BIRN to wage a campaign against the government. BIRN had reported on a contract award by Elektroprivreda Srbije - Serbia’s state-owned power utility - to a consortium with no relevant experience and at an apparently inflated cost. BIRN linked the consortium to an associate of Vučić’s.

Vučić’s attacks on BIRN took on a very personal note, with the prime minister publicly accusing Michael Davenport, the EU’s ambassador to Serbia, and Maja Kocijančič, the Commission’s spokeswoman for enlargement in Brussels, of using BIRN in an attempt to undermine him. Vučić’s outburst deflected attention from the substance of BIRN’s reporting, with Serbian media now reporting on BIRN’s foreign funding instead of what its reporters had uncovered.

The personal nature of Vučić’s attack took some officials in Brussels by surprise given that Serbia is currently in the midst of a sensitive phase in its negotiations to join the EU. (The screenings that help prepare actual negotiations are scheduled to wrap up at the end of March.) However, while these were the government’s most virulent attacks against BIRN and its foreign donors, they were by no means the first.

BIRN’s reporting last August on Air Serbia - a newly formed joint venture between the government as a majority shareholder and the United Arab Emirates’ Etihad with a 49% stake - had also displeased the government. In an investigation carried by the newsweekly Vreme, BIRN reported that the government had paid several times more for its 51% stake in the new air carrier than Etihad for its 49%. Vučić subsequently questioned BIRN’s reporting and motives, prompting Serbia’s Association of Independent Journalists (NUNS) to comment that “in a democratic society it is unacceptable for the PM to discredit media in such a manner in public”.

Already in June last year, barely two months after becoming prime minister, Vučić - information minister in the last government under Slobodan Milošević, and as such in charge of clamping down on opposition media during the war in Kosovo - provoked a public controversy on freedom of media. The OSCE, backed by Serbia’s ombudsman, had expressed concern when the news site Peščanik.net (as well as a couple of other websites) was forced offline after reporting that Nebojša Stefanović, Vučić’s interior minister, had plagiarised parts of his PhD dissertation. Vučić publicly turned on the OSCE, accusing it of “lying” and demanding an apology, which predictably was not forthcoming. “The OSCE has uttered falsehood and lies, and I’m telling the truth,” he said and suggested that Serbian media had come under pressure from foreign powers to attack his government.

Numerous other incidents, some of them more ambiguous than others, suggest the government’s heavy hands in dealing with the media. To name but one, “Uti-

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sak nedelje” - a politics show on B92 television - was cancelled last September under murky conditions, with the show’s host, Olja Bećković, alleging censorship. When the French government reportedly decided to award Bećković a medal, *Informer*, a daily close to Vučić’s party, headlined on its front page, “French blow to the Prime Minister”.

So far, the government’s attacks on the free media seem to have had a negligible effect on Vučić’s standing in Brussels as a leader who can deliver on promises (in contrast with some of his predecessors). The EU’s main concern in the region is to conclude the on-going, EU-brokered talks between Belgrade and Prishtina, whose results are central to the Union’s peace-building narrative, and to ensure regional stability. Regional stability is the top priority of both the EU and the United States, at a time when fears of violent extremism are shaping the policy agenda in Washington and Brussels, and Vučić is delivering on his promise of improved relations with neighbours.

An unguarded comment to reporters by Johannes Hahn, the European Commissioner for Enlargement Negotiations, in February seemed to confirm the suspicion that media freedom was not the EU’s priority in relations with Serbia. Hahn praised Vučić for taking a pragmatic line on relations with neighbours and singled out his attendance at the inauguration of Croatia’s new president and an agreement with Prishtina on the work of courts in the Serbian part of Kosovo before saying that he needed “proof, not rumours” in order to act on media freedom. (Hahn had met Vučić the week before, on the resumption of the Belgrade-Prishtina talks in Brussels, and emerged from the meeting saying that the two had resolved their differences.)

A Commission official denied that Hahn’s comment was meant to cast doubt on reports that Serbia’s media are under pressure, but the damage had been done. Vučić promptly took to Twitter to express his appreciation for Hahn’s willingness to seek the truth and defy “media pressures”.

Vučić’s combative attitude toward the media comes on top of the more structural challenges journalists are facing in Serbia and the region more generally - challenges such as the political instrumentalisation of media by their owners. Most of Serbia’s print and broadcast media are either pro-government or completely apolitical, serving up pure entertainment. Vučić gets favourable, even fawning coverage from these outlets, with little if any room given to critical voices. Among the very few exceptions are, among the established media, the daily *Danas*, and among the newcomers, TV N1, a CNN affiliate launched in Croatia, Bosnia-Herzegovina and Serbia last October. Ahead of its launch, *Informer* suggested that the new channel was part of a plan by the United States to undermine Vučić. But the incoming Vučić government quickly made peace with the new channel, reportedly under intense lobbying from both the U.S. investors behind it and the European Commission. It reversed course and dropped provisions in the draft law on electronic media prohibiting cable operators from producing content, which would have blocked N1. So far, Vučić has refrained from criticising or second-guessing N1 even though its reporting has not been flattering.

The issue of media ownership also deserves brief mention here since opaque ownership raises suspicions of political influence-peddling or outright corruption. The head of Serbia’s anti-corruption agency, Tatjana Babić, stressed at a presentation in Ljubljana in December how difficult it was for her agency to establish who the effective owner of a media company was, and pointed out that

the country's competition authority, currently in the process of investigating the broadcaster B92, also believed that ownership transparency was inadequately regulated in Serbia. This is a serious issue in the other countries of the region as well. Opaque ownership arrangements make it impossible for audiences to understand the economic or political considerations that might have been a driver of coverage. They also make it impossible to counter a pervasive cynicism across the region about the media that sees all of them motivated by crude favouritism or greed.

In this context, the crucial role of investigative journalism should be noted since it plays a key role in combating corruption, helping to strengthen the rule of law and smoothing the path to eventual accession to the EU. But investigations are expensive to run as editors and reporters spend time on analysing complex evidence that may or may not lead to actual stories. They are an uncertain investment that requires political and financial independence of a kind that few media outlets enjoy. They also require a level of technical knowledge - for example, about accounting - that few newsrooms have at their disposal. Finally, they require courage as reporters uncover information that was deliberately concealed, and as editors have to decide whether to run it.

No one would seriously compare today's Serbia to that of the Milošević era, with its assassinations of journalists, media bans and outright censorship. However, there are clear authoritarian tendencies in the current government that find their most tangible expression in the instrumentalisation of the media and in relentless attacks on those who persist in reporting things as they are.

Bosnia-Herzegovina

Perhaps the most chilling incident concerning free media in Bosnia-Herzegovina in recent years occurred at the very end of December 2014, when police raided the offices of Intersoft, owners of Klix.ba, a popular web portal. Acting on a warrant from Sarajevo municipal court, the authorities were searching for the original recording of a conversation published by Klix in November that had caused a political scandal in the Republika Srpska (RS), one of the two entities into which the country is divided.

In the recording, Željka Cvijanović, the RS prime minister, appeared to be discussing bribes being paid to two opposition parliamentarians in exchange for their support of the government that was being formed at the time by the ruling Alliance of Independent Social Democrats (SNSD) of RS President Milorad Dodik.

Dodik and his political allies cast doubt on the recording's authenticity, and RS prosecutors summoned the portal's editors to Banja Luka, the RS capital, for questioning. They seemed interested primarily in identifying the source of the recording.

The following month, on 29 December, police conducted a highly unusual raid on the Sarajevo offices of Intersoft. The officers carrying out the raid came not only from Sarajevo cantonal police, as would be expected in such circumstances, but also from the RS police. This curious fact prompted Tihomir Loza of Transitions Online to observe that inter-entity police co-operation seemed to work fine in Bosnia-Herzegovina when it came to suppressing media freedom (though not in many other areas). The police confiscated computers, mobile phones and other equipment and destroyed some of it, according to journalists who were present during the raid.

The raid was so controversial that the Federation authorities felt compelled to review the decision allowing it. On 4 February, the Federation government endorsed reports from the entity's justice and interior ministries according to which the raid had violated the constitutional rights of the journalists involved. It also said that the raid had been "manifestly unlawful" and noted in particular that RS police officers actively participated in the search even though the law only allowed them to attend such operations.

In a long piece on the increasingly frequent attacks on journalists in Bosnia-Herzegovina, the newsweekly Dani on 9 January accused the country's judiciary of prosecuting journalists instead of the crimes they report on.

The RS government has a long history of antagonistic relations with certain media, notably the private BN television channel from Bijeljina, barring it from attending news conferences and withholding public information from it. BN reporters have been unable to get accreditation for Dodik's news conferences, for example. Such intimidation is by no means limited to RS, although the somewhat more pluralistic politics of the Federation create more space for free media there.

An additional concern for the media and for freedom of expression more generally is a new law adopted by the RS National Assembly on 5 February. The Law on

Public Peace and Order raised fears that the authorities might in the future seek to clamp down on online expression such as Tweets or Facebook posts. The law criminalises social media postings that disturb public order or contain indecent, offensive or insulting content. An official at the EU Delegation explained that in the Delegation's preliminary analysis, the main problem with these provisions was their sweeping character, which hands prosecutors and judges almost unlimited power to clamp down on online expression.

The day the new law was adopted, the EU Delegation to BiH issued a statement that read in part: "Any regulation must be necessary, clearly defined and prescribed by the respective legislation. We believe that the definitions in the RS law on public order remain vague and leave too much room for arbitrary implementation. Having this in mind we call upon the responsible authorities to ensure clarity and proportionality in legislation and its implementation."

Dunja Mijatović, the OSCE's Representative on Freedom of the Media, also condemned the new law, which had been adopted over her objections. "I am disappointed that so many local and international voices of concern were simply ignored," she said in a statement, adding that the law "paves the way for legal restrictions to online free expression and free media". "By including social media in the law, there is a danger that officials could interpret ill-defined terms to sanction and limit the free flow of information and free expression online." In her view, legal sanctions against online statements are justified only in cases of "direct incitement to violence". "Freedom of expression online should be left to self-regulatory bodies to deal with."

Macedonia

Macedonia is the Western Balkan's worst performer on the annual World Press Freedom Index, ranking 117th place out of 180 countries surveyed in 2015. This is actually an improvement over the 2014 index, where the country ranked 123rd - but it is a catastrophic decline from as recently as 2009, when the country ranked 34th out of 170.

On the surface, this might appear surprising given the abundance of broadcast media in the economically depressed country. With a population of slightly over 2 million, Macedonia has no fewer than 64 commercial television channels and 73 radio stations (in addition to the public service broadcaster), airing in Macedonian, Albanian and other languages. However, this is a testament to the sector's fragmentation and weakness rather than to genuine pluralism, according to a recent report from the South East European Media Observatory, as small operators compete for scarce advertising funds and seek to attract equally scarce qualified staff.

Macedonia's fragmented media market, with its intense competition for advertising, makes individual media highly susceptible to economic pressure from advertisers, and no advertiser appears more powerful than the government, since 2006 in the hands of the national-conservative VMRO-DPMNE. In 2013, the state was the second-biggest advertiser on national TV channels, with frequent complaints that it allocates advertising depending on whether it perceives a particular outlet's reporting as friendly. This is especially troubling as the government has in recent years massively expanded its media campaigns, which has widened its influence over the media.

The financial vulnerabilities experienced by most media in Macedonia are amplified by a political context that is highly polarised - perhaps the most polarised in the region. The country is in the midst of a debilitating political crisis pitting the nationalist government against the Social Democratic opposition, and an alleged espionage plot by the opposition, which the government claims to have uncovered, has further deepened the sense on both sides that an existential struggle is underway. Macedonia also feels vulnerable internationally as neighbouring Greece has been blocking the opening of membership talks with the EU for almost 10 years. With all progress blocked by an intractable dispute over the country's name, Macedonia's elites see no incentive for adhering to EU rules and values. Backsliding on democracy inside the EU has further diminished the Union's credibility as a role model.

The government has relentlessly pressed the media into service in its battle against the opposition. The ruling VMRO-DPMNE views the media as "key in achieving the political goals.... they are a means of mobilisation and not a means of information", in the words of one journalist quoted in "Media Integrity Matters". Only a handful of media have been able to resist the government's relentless drive for control through advertising.

Observers are also worried by the use of civil lawsuits in defamation cases and the imposition of crippling fines by the courts. In one example last October, the Skopje Court of Appeals upheld a first-instance ruling which ordered Fokus, an

investigative magazine, to pay more than €9,500 in damages and court fees in a case brought by Sasho Mijalkov, Macedonia's counter-intelligence chief (and a cousin of Nikola Gruevski, the prime minister). Fokus had reported on allegations of corruption against Mijalkov brought by another official who had gone into hiding abroad.

Against this backdrop, opposition allegations in January of systematic eavesdropping by the intelligence services on more than 20,000 Macedonians - including journalists - are especially worrying. Zoran Zaev, the leader of the opposition Social Democrats, has been charged with espionage for disclosing this information, together with several associates, but he has been pressing on with revelations to embarrass the government; throughout February, he released a string of recorded conversations in which Gruevski, Mijalkov and other senior officials discuss, among other things, interference with various media outlets.

An attempt by the government to curb reporting on the affair by national media seems to have backfired. On 3 February, the office of the public prosecutor warned the country's media that the law prohibits the publication of materials that may become the subject of criminal proceedings - a thinly disguised threat to journalists that they, too, could be charged if they report on the opposition's allegations. The warning drew a stern admonition from the U.S. Embassy in Skopje. Johannes Hahn, the European Commissioner for Enlargement Negotiations, expressed "full support for the freedom of media to report on issues of public interest" during talks in Skopje on 17 February, a statement that was seen as weak by many observers.

Recommendations

- Domestic authorities must investigate instances of intimidation or threats against journalists promptly and impartially.
- Domestic authorities must clear a backlog of unresolved assassinations and physical attacks against journalists by fully investigating these cases and bringing charges where possible.
- Governments must abstain from attempts to use intimidation or economic pressure to influence coverage.
- The European Union and other foreign governments should put issues of media freedom near the top of their political agendas in the region, and lobby for improvements. The European Union should make clear at the political level that threats to media freedom are unacceptable in a country seeking to join the EU.
- The EU's delegations in the countries of the Western Balkans should monitor issues of media freedom using objective indicators and highlight them systematically in the European Commission's annual progress reports.
- Foreign donors should acknowledge the limitations of a legal-institutional approach to media freedom and seek innovative ways to support effective action to support free media.
- The EU, as the region's largest donor, should consider innovative ways to support independent media not just through its regular grant schemes but also with more flexible approaches.
- Foreign donors should seek ways to support journalists' unions through networking and capacity-building so the unions can become more effective in protecting journalists against financial or political pressure.
- Media organisations should be required by law to publicly disclose their effective owners.
- Domestic competition authorities must be given the means to investigate unlawful media concentration.
- Media accreditation must be provided to any media organisation that meets the basic legal requirements. Accreditation, access to official news conferences and the sharing of public information must not be treated as a favour to reporters but as their right.
- Governments - including at the local level - should be required to place official notices (such as invitations to tender or advertisements for public-sector employment) according to objective criteria (such as print run or geographic coverage) rather than as a means to provide favours to friendly media. The criteria should be transparent and measurable.

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The European Fund for the Balkans

The European Fund for the Balkans is a joint initiative of European foundations designed to undertake and support initiatives aimed at bringing the Western Balkans closer to the European Union through grant-giving and operational programmes and, as such, is focused on individuals and organisations from Western Balkan countries.

As a direct follow-up to the International Commission on the Balkans (2004-2006), the Fund embodies the “member-state building strategy” with the development of functioning state administrations and constituency-building as its main priorities.

The European Fund for the Balkans has been initiated by four European Foundations including the Robert Bosch Stiftung, the King Baudouin Foundation, the Compagnia di San Paolo and the ERSTE Foundation. It is hosted by NEF.

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